Supreme Court, U.S.
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91-1428
No. _____

In The
# Supreme Court of the United States
October Term, 1991

PAUL MIDDLETON,
*Petitioner,*

vs.

CROWLEY TOWING AND TRANSPORTATION, INC.,
*Respondent.*

**Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit**

## PETITION FOR WRIT OF CERTIORARI

RALEIGH NEWMAN
435 10th Street
Lake Charles, Louisiana 70601
(318) 439-5788

*Attorney for Petitioner*
*Paul Middleton*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

## QUESTION PRESENTED

Plaintiff/appellant, PAUL MIDDLETON, filed this seaman's suit under the Jones Act and General Maritime Laws seeking damages for injuries he sustained while employed by defendant/appellee, CROWLEY TOWING & TRANSPORTATION COMPANY, as a seaman. This accident occurred on March 29, 1990, while the plaintiff/appellant, PAUL MIDDLETON, was a member of the crew of a vessel, the *Catano*, owned and operated by his employer, CROWLEY TOWING & TRANSPORTATION COMPANY. This accident occurred while the vessel was located in the San Juan Harbor, Puerto Rico.

The defendant/appellee, CROWLEY TOWING AND TRANSPORTATION COMPANY, filed a Motion for Summary Judgement seeking dismissal of plaintiff/appellant's claim based on the provisions of the Puerto Rico State Insurance Compensation Fund. This Motion for Summary Judgment was sustained by the Trial Court, dismissing the plaintiff/appellee's Petition, which decision was sustained by the Fifth Circuit Court of Appeal.

It was the position of the defendant/appellee that the plaintiff/appellant, PAUL MIDDLETON, was a resident of Puerto Rico at the time of this accident and that he was precluded by Puerto Rican law from maintaining this action.

It is the position of the plaintiff/appellee that he was not a resident of Puerto Rico at the time of this accident, and that he is entitled, under the facts and circumstances of this case, to maintain an action under the Jones Act and the General Maritime Laws.

## INTERESTED PARTIES

1. Paul Middleton
   Plaintiff/Appellant

2. Crowley Towing and Transportation Company
   Defendant/Appellee

## ATTORNEYS FOR PARTIES

1. Raleigh Newman
   Donald McKnight
   Attorneys for plaintiff/appellant
   435 10th Street
   Lake Charles, La. 70601

2. Owen M. Goudelocke
   Domengeaux & Wright
   Former Counsel of Record for plaintiff/appellant
   P.O. Box 3668
   Lafayette, La. 70502-3668

3. Allen Smith
   Plauche, Smith & Nieset
   Attorneys for defendant/appellee
   P.O. Box 1705
   Lake Charles, La. 70601

4. William A. Graham
   Jimenez, Graham & Lausell
   Co-Counsel for defendant/appellee
   P.O. Box 366104
   San Juan, Puerto Rico

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## OPINIONS BELOW

The plaintiff/appellant, PAUL MIDDLETON, filed this action on June 7, 1990, in the United States District Court for the Western District of Louisiana. The defendant/appellee, CROWLEY TOWING & TRANSPORTATION COMPANY, filed a Motion for Summary Judgment on January 2, 1991. The District Court on February 21, 1991, issued a Memorandum Ruling sustaining the Motion for Summary Judgment, and a formal judgment was signed by the District Judge on February 26, 1991.

The plaintiff/appellant, PAUL MIDDLETON, timely filed an Appeal with the Fifth Circuit Court of Appeal. That Honorable Appeals Court rendered a decision dated November 4, 1991, sustaining the decision of the District Judge, and finding that the Motion for Summary Judgment was properly granted.

The plaintiff/appellant, PAUL MIDDLETON, timely filed an Application for Rehearing with the Fifth Circuit Court of Appeal, which rehearing was denied on December 6, 1991.

## JURISDICTION

The Honorable Fifth Circuit Court of Appeal rendered a decision on November 4, 1991, affirming the decision of the District Court sustaining the defendant/appellee's Motion for a Summary Judgment. The plaintiff/appellant filed an Application for Rehearing with the Fifth Circuit Court of Appeal which was denied on December 6, 1991. This petition for certiorari is being

filed within the prescribed period of 90 days after December 6, 1991. Jurisdiction is conferred on this Court by 28 U.S.C. 1254(1).

## STATUTORY PROVISION

Title 11, Section 21, Laws of Puerto Rico Annotated.

> "When an employer insures his workmen or employees in accordance with this chapter, the right herein established to obtain compensation shall be the only remedy against the employer, even in those cases where maximum compensations and benefits have been granted in accordance thereof; but in case of accident to, or disease or death of, the workmen or employees not entitled to compensation under this chapter, the liability of the employer is, and shall continue to be, the same as if this chapter did not exist."

48 U.S.C. 749

> "The harbor areas and navigable streams land bodies of water and submerged lands underlying the same in and around the island of Puerto Rico; and the adjacent islands and waters, owned by the United States on March 2, 1917, and not reserved by the United States for public purposes, are placed under the control of the government of Puerto Rico, to be administered in the same manner and subject to the limitations as the property enumerated in sections 747 and 748 of this title. All laws of the United States for the protection and improvement of the navigable waters of the United States and the preservation of the interest of navigation and

commerce, except so far as the same may be locally inapplicable, shall apply to said island and waters and to its adjacent islands and waters. Nothing in this chapter contained shall be construed so as to affect or impair in any manner the terms or conditions so any authorizations, permits, or other powers lawfully granted or exercised in or in respect of said waters and submerged lands in and surrounding said island and its adjacent islands by Secretary of the Army or authorized officer or agent of the United States prior to March 2, 1917. Notwithstanding any other provision of law, as used in this section (1) "Submerged lands underlying navigable bodies of water" include lands permanently or periodically covered by tidal waters up to but not above the line of high tide, all lands underlying the navigable bodies of water in and around the island of Puerto Rico and the adjacent islands, and all artificially made, filled in, or reclaimed lands which formerly were lands beneath navigable bodies of water; (2) "navigable bodies of water and submerged lands underlying the same in and around the island of Puerto Rico and the adjacent islands and waters" extend from the coastline of the island of Puerto Rico and the adjacent islands as heretofore or hereafter modified by accretion, erosion, or reliction, seaward to a distance of three leagues; (3) "control" includes all right, title, and interest in and to and jurisdiction and authority over the submerged lands underlying the harbor areas and navigable streams and bodies of water in and around the island of Puerto Rico and the adjacent islands and waters, and the natural resources underlying such submerged lands and waters, and

includes proprietary rights of ownership, and the rights of management, administration, leasing, use, and development of such natural resources and submerged lands beneath such waters."

## STATEMENT OF THE CASE

The accident involved in this litigation occurred on March 29, 1990, while the plaintiff/appellant, PAUL MIDDLETON, was a member of the crew of a vessel, the *Catano*, owned and operated by his employer, CROWLEY TOWING & TRANSPORTATION COMPANY. This accident occurred while the vessel was located in the San Juan Harbor, Puerto Rico.

The defendant/appellee, CROWLEY TOWING & TRANSPORTATION COMPANY, filed a Motion for Summary Judgment seeking to have the plaintiff/appellant's action under the Jones Act and General Maritime Laws dismissed based on the provisions of Puerto Rico's workman's compensation laws, which laws have been held to provide that an action under the Jones Act and General Maritime Laws can not be maintained based on an accident which occurs in Puerto Rico's waters, and causes injuries to a resident of Puerto Rico.

The Motion for Summary Judgment filed by defendant/appellee was granted by the District Court by Judgment dated February 26, 1991. The plaintiff/appellant, PAUL MIDDLETON, filed an appeal with the Fifth Circuit Court of Appeal which honorable court affirmed the decision of the District Court, with jurisdiction being

based on 28 U.S.C. 1291. The plaintiff/appellant filed an Application for Rehearing, which Application was denied by the Fifth Circuit by decision dated December 6, 1991. The plaintiff/appellant hereby files this Petition for Writ of Certiorari with this Honorable Court seeking review of the decision of the Fifth Circuit Court of Appeal.

The Plaintiff/appellant, PAUL MIDDLETON, is a United States citizen, residing in Louisiana. The plaintiff/appellant was informed that if he would contact the defendant's office in Puerto Rico they would possibly need a seaman of his classification. The plaintiff/appellant traveled to Puerto Rico and obtained employment with the defendant, CROWLEY TOWING & TRANSPORTATION COMPANY. The plaintiff/appellant is a member of the Seafarers International Union, and his employment had to be officially obtained through the Union.

Once the plaintiff/appellant, PAUL MIDDLETON, had obtained employment as a seaman with the defendant the plaintiff/appellant spent his time aboard the defendant's vessels. It was aboard these vessels that he ate, slept, worked, and spent most of his free time.

The plaintiff/appellant did not lease, rent, own, or otherwise obtain permanent or semi-permanent housing in Puerto Rico. He did on a few occasions, for recreational purposes, rent a room in Puerto Rico; however, he never rented the same room more than once, and only rented each room for a very short period of time. The longest period of time during which he rented a room was for about three (3) weeks prior to his employment by CROWLEY TOWING AND TRANSPORTATION COMPANY, while he sought said employment. During the

time of his employment, after he had rented a room for the night for recreational purposes, he would return to one of the defendant's vessels.

During the approximate 60 days prior to his injury that the plaintiff/appellant worked for the defendant, CROWLEY TOWING & TRANSPORTATION, there were other employees working with him who were hired by the defendant in the United States. Like the plaintiff/appellant, these co-employees worked and spent most of their time on the defendant's vessels. In addition, some of these co-employees also would on occasion rent a room in Puerto Rico for the night.

While the plaintiff/appellant, PAUL MIDDLETON, was employed in Puerto Rico he maintained his Lake Charles, Louisiana, address. In addition, plaintiff/appellant maintained his bank account in Lake Charles, and sent the money he earned to his mother for deposit in his account. If he wished to make a telephone call the plaintiff/appellant would use a pay phone. He had no telephone number, or address where he could be contacted other than at the defendant's office, or aboard the defendant's vessel.

After his injury on March 29, 1990, the plaintiff/appellant continued on to the Virgin Islands where he went to the hospital. In a couple of days the plaintiff/appellant was flown back to Puerto Rico where he saw a doctor for his injuries. This medical evaluation was apparently part of the initial medical evaluation with the Puerto Rico State Insurance Compensation Fund. When the plaintiff/appellant was sent to the Doctor in Puerto

Rico he was not aware that he was being sent for evaluation in accordance with Puerto Rico's workman's compensation laws. As part of this evaluation the plaintiff/appellant was asked for his address and he gave his Lake Charles address.

Once he learned that he would not be physically able to return to his employment with the defendant, the plaintiff/appellant began to make arrangements to return to Louisiana. A couple of days after he received his paycheck the plaintiff/appellant, PAUL MIDDLETON, made arrangements and returned to his address in Louisiana.

The defendant, CROWLEY TOWING & TRANSPORTATION COMPANY, is a Louisiana corporation, operated out of Louisiana, and authorized to do business in Puerto Rico. The defendant's vessels upon which the plaintiff/appellant worked and stayed were, to the best of plaintiff/appellant's knowledge, chartered in, and flew the flag of, the United States of America.

The great majority of the voyages undertaken by the plaintiff/appellant as a result of his employment with the defendant were to the United States, or its territories. In addition, while employed by defendant the plaintiff/appellant spent the great majority of the time outside of the waters of Puerto Rico on various voyages.

## ARGUMENT

A Summary judgement was granted by the Trial Court in favor of the defendant/appellee, Crowley Towing and Transportation Company, dismissing this matter.

This Summary Judgement was based on the Puerto Rico State Insurance Compensation Fund being the exclusive remedy available to the plaintiff/appellant, Paul Middleton.

The Plaintiff/appellant, Paul Middleton was a seaman working for the defendant/appellee aboard a vessel owned and operated by the defendant/appellee.

Crowley Towing and Transportation Company is a Louisiana Corporation authorized to do business in Puerto Rico.

Paul Middleton traveled to Puerto Rico where he obtained employment with defendant/appellee.

On March 29, 1990, Paul Middleton was injured while in the course and scope of his employment with Crowley Towing and Transportation Company.

This accident occurred in San Juan Harbor, Puerto Rico, within Puerto Rico's territorial waters.

Congress has authorized Puerto Rico to pass legislation inconsistent with the Jones Act and General Maritime laws.

Paul Middleton had been working for the Crowley Towing and Transportation Company for about 60 days prior to this accident.

Paul Middleton would eat, sleep, and otherwise live on the defendant/appellee's vessels during the entire time of his employment, and he would occasionally obtain a room overnight in Puerto Rico for recreational purposes.

The large majority of Paul Middleton's time was spent on the defendant/appellee's vessels on voyages, or otherwise outside of Puerto Rico's waters.

Paul Middleton maintained a Louisiana address, and Louisiana bank account where he would deposit his pay check.

The issue in this case is whether the authorization of Congress granted to Puerto Rico to pass legislation inconsistent with the Jones Act and General Maritime Laws should be applied to the extent that it prevents the plaintiff/appellant, Paul Middleton, from asserting this cause of action for his injuries sustained while a seaman.

The plaintiff/appellant stated in his affidavit that there were other seamen working with him who were hired outside of Puerto Rico, lived on the defendant/appellee's vessels, occasionally obtained rooms in Puerto Rico for recreational purposes.

The plaintiff/appellant spent most of his time out of Puerto Rico's waters.

The plaintiff/appellant never exhibited an intent to make Puerto Rico his residence.

This matter was decided on a Motion for Summary Judgement, and it is the position of the plaintiff/appellant that, under the facts and circumstances of this case said Motion was improperly granted.

The defendant/appellee, CROWLEY TOWING & TRANSPORTATION COMPANY, asserts that it is entitled to a Summary Judgment based upon this accident occurring in Puerto Rican waters, the relationship of the defendant to Puerto Rico, and the relationship of the plaintiff/appellant to Puerto Rico. It is the defendant's position that as a result of the above, the plaintiff/appellant is barred from recovering under the Jones Act and General Maritime laws because of the exclusive remedies provided under Puerto Rico's workman compensation laws.

It is the position of the plaintiff/appellant, PAUL MIDDLETON, that, even though this accident occurred within Puerto Rican waters, the relationship of both the defendant, and the plaintiff/appellant, with the mainland of the United States, and the territory of Puerto Rico, is such that the plaintiff/appellant does not fall within that category of seamen limited to recovery of workman's compensation under Puerto Rico's laws as authorized by Congress.

The issue with regard to the appeal of the granting of the Motion for Summary Judgment in this case is whether the authority granted to Puerto Rico by the Congress of the United States to enact legislation inconsistent with the Jones Act and the General Maritime Laws extends to the plaintiff/appellant, PAUL MIDDLETON, under the facts and circumstances of this case.

In deciding this issue it should be borne in mind that seamen have long been considered wards of the court. In addition, the General Maritime laws which are designed to provide protection to the seaman have developed over many years, along rather uniform lines, in a number of

countries. *Guerrido v. Alcoa Steamship Co.* 234 F.2d 349, (1st Cir. 1956). In fact, the importance placed upon providing this protection to the seaman can be seen by the restraints our Constitution places upon the Congress to delegate to the State's legislative authority over maritime matters. Therefore, it is submitted that any attempt to limit the protection provided to the American seaman must be narrowly applied.

In the *Guerrido* (supra) case the plaintiff/appellant was an American longshoreman residing in Puerto Rico who was injured aboard the defendant's ship, which accident occurred in Puerto Rican waters. The plaintiff/appellant brought suit against the vessel, her owner and its agent. The defendants took the position that the substantive admiralty laws of the United States were inoperative in that matter.

The Court, after considering the importance and long development of maritime law, limited its holding in *Lastra v. New York and Porto Rico S.S. Co.* 2 F.2d 812 (1st Cir. 1924), and held that plaintiff/appellant could proceed in admiralty against the defendants. In particular the Court stated the following:

> " . . . we have reached the conclusion that the broad proposition that the admiralty and maritime law of the United States is not in force to any extent in the navigable waters of Puerto Rico which we had laid down in the Lastra case cannot be sustained." (pg. 352)

In the case of *Forsenca v. Prann*, 282 F.2d 153 (1st Cir. 1967) the Court held that, in regard to Puerto Rican citizens, it was Constitutional for the Congress to authorize Puerto Rico to pass laws superseding the Jones Act

and General Maritime Laws. However, the Court was not called upon to decide the extent to which Congress can, or has, authorized such action by Puerto Rico. The Court did not consider if, and when, the Puerto Rican limitations on a seaman's recovery can be applied to an American seaman.

In the *Alcoa Steamship Co. v. Rodriguez*, 376 F.2d 35 (1st Cir. 1967) case the Court was called upon to consider whether the Puerto Rico Workman's Accident Compensation Act provides the exclusive remedy for a longshoreman, who was a citizen of Puerto Rico, injured in Puerto Rican waters, against his employer. The Court held that, under the facts of that case, the P.R.W.A.C.A. did provide the exclusive remedy for that longshoreman. However, the Court pointed out that there are limits to the applicability of the P.R.W.A.C.A. and, in particular, cited the case of *Alcoa Steamship Co., Inc. v. Velez*, 376 F.2d 521 (1st Cir. 1967), as an example of the limits of its limitations. (See footnote 3, page 38).

In the case of *Alcoa Steamship Co., Inc. v. Velez* (supra) the issue was whether the P.R.W.A.C.A. applied to a seaman employed in the United States, working temporarily in Puerto Rico, as the crew member of a non-Puerto Rican, U.S. owned vessel, when injured. The court noted that Congress had not delegated to Puerto Rico the authority to " . . . apply its local compensation act to seamen who are actually employed under federal maritime laws . . . " (Page 524). In addition, the Court noted that " . . . the delegation of such power would radically change the characteristic feature of the general maritime law that it follows the flag of the vessel and would seriously interfere with the proper uniform application of

that law in its international and interstate relations." (Page 524)

The Court stated that the *Alcoa v. Rodriguez* (supra) case dealt with a Puerto Rican maritime worker, and that this was the extent of the power of Puerto Rico to supersede general maritime law. The Court held that the P.R.W.A.C.A. could not " . . . be applied to seamen injured in Puerto Rican waters on an American vessel owned by a corporation of a state other than Puerto Rico where the contract of employment was not entered into in Puerto Rico. (Page 525).

In the case of *Lusson v. Carter*, 704 F.2d 646 (1st Cir. 1983), the deceased seamen were employed by a Louisiana corporation authorized to do business in Puerto Rico. In addition, it was stipulated that one of the seamen was domiciled and residing in Puerto Rico, that the other seaman was domiciled in New York and residing in Puerto Rico, that both were hired in Puerto Rico, they were injured in Puerto Rican waters, and that the defendant had insured them under the P.R.W.A.C.A. when they were injured.

The Court stated that its holding in *Alcoa Steamship Co., Inc. v. Velez* (supra) did not establish certain factors which must be found in limiting the applicability of the P.R.W.A.C.A.

In the case of *Lusson v. Carter* the Court stated the following:

> "*Velez* simply made clear that injury in Puerto Rican waters is not enough to give Puerto Rico authority to impose its compensation scheme on foreign workers. In this case the Court had

> much more to go on than simply the location of the injury. Both decedents were residents of Puerto Rico, their employer was authorized by the Commonwealth to do business in Puerto Rico and it had voluntarily insured the decedents under the PRWACA. *These factors are not necessarily conclusive.* Plaintiffs might have been able to persuade the district court, had they offered any evidence, that countervailing considerations outweighed Puerto Rico's interest in applying its own statute." (pg. 650, emphasis added)

As can be seen the Court stated that the plaintiffs, if they had presented evidence, may have been able to establish factors that outweighed Puerto Rico's interest in applying the P.R.W.A.C.A. to these plaintiffs. The Court went on to cite the *Lauritzen v. Larsen*, 345 U.S. 571, 73 S.Ct. 921, (1953), as a case establishing factors to be considered in weighing the interest of Puerto Rico in applying its law to a particular case. (Page 650).

In the *Lauritzen* case (supra) the U.S. Supreme Court discussed seven (7) contacts to be considered in balancing the interest of the United States, and foreign interests, in order to determine when to apply the maritime laws of the United States to a particular seaman. These contacts are as follows: (1) the place of injury; (2) the law of the flag; (3) allegiance or domicile of the injured seaman; (4) the allegiance of the ship owner; (5) place of employment; (6) inaccessibility of foreign forum; (7) and law of the forum. These factors are not counted, and whether there are substantial contacts with the U.S. are not " . . . to be determined on an absolute scale and not by comparing or balancing the presence of certain contacts with the

absence of others." *Moncada v. Lemuria Shipping Corp*, 491 F.2d 470 (2nd Cir. 1974) at Page 472.

The above seven (7) contacts are not an exhaustive list, and this is not a mechanical test. *Hellenic Lines Limited v. Rhoditis*, 398 U.S. 396, 90 S.Ct. 1731 (1970). The Courts have placed more emphasis on such contacts as the law of the flag than it has on other contacts. Among the contacts that the Court has paid little attention to include: the place of injury; the place of employment; and the inaccessibility of a foreign forum. *Moncada* (supra).

The defendant in this case, CROWLEY TOWING AND TRANSPORTATION COMPANY, has taken the position that the plaintiff/appellant, PAUL MIDDLETON, resided in Puerto Rico at the time of this accident. The defendant has further taken the position that the word "domicile" and the word "residence" have different meanings and that a person can have several residences even though he has only one domicile.

The word "resident" has many meanings in the law, largely determined by the context in which it is used. *Arredondo v Brockette*, 648 F.2d 425 (5th Cir. 1981). Although the meaning may vary according to the context in which the word "residence" is used, it generally requires both a physical presence and an intention to remain. *Martinez v Bynum*, 103 S.Ct. 1838 (1983 at Page 1843). It has also been held that, the mere lodging, boarding, or temporary occupation is not enough to establish a residence. *Martinez* (supra).

It is the position of plaintiff/appellant, PAUL MIDDLETON, that he was not a resident of Puerto Rico at the time of this accident. He did not obtain housing, an

address, or such other contacts with Puerto Rico as to establish a relationship sufficient to make him a resident of Puerto Rico. It is the position of the plaintiff/appellant, that when a seaman is injured within Puerto Rican waters, the Court must look to all of the facts and circumstances of the case in order to determine whether there are sufficient contacts to require the application of Maritime Law to the seaman's injuries. The residency of the seaman is simply one of the factors, among others, to be considered.

In this case the plaintiff/appellant, PAUL MIDDLETON, was a seaman working out of the Seafarers Union with his domicile in Louisiana. He obtained employment in Puerto Rico with the defendant, and during that employment lived on the defendant's vessels. During the term of this employment he spent the majority of his time outside of Puerto Rican waters. He continued to receive his mail in, and maintained his bank account in Louisiana. The defendant, CROWLEY TOWING AND TRANSPORTATION COMPANY, is a Louisiana corporation.

It is respectfully submitted that under the facts of this case the plaintiff/appellant should not be denied the protection and rights granted to him under the Jones Act and the General Maritime Laws. While it is true that the plaintiff was hired in Puerto Rico, he was otherwise in the same position as the other seamen with whom he worked who were hired outside of Puerto Rico. These seamen also lived on the defendant's vessels and occasionally rented rooms for recreational purposes.

As the Trial Court noted the " . . . plaintiff has made it clear that he never resided in any one location for long, moving from place to place and from job to job. . . . " There is no indication that the plaintiff intended to remain at this job in Puerto Rico for any extended time. Therefore, there is no evidence of any intention of the plaintiff to adopt such a reliance on Puerto Rican laws as to indicate any intention to abandon his rights as a seaman.

In this matter it should be recalled that Paul Middleton, plaintiff/appellant, was a seaman and not a longshoreman. This distinction is significant in this case because the claimant, PAUL MIDDLETON, spent the great majority of his time on the defendant/appellee's vessels outside of Puerto Rican waters. It is submitted that seaman should not be denied the protection of the Jones Act and General Maritime Laws based upon his obtaining employment in Puerto Rico, and being injured in Puerto Rican waters, where most of his time was spent outside of Puerto Rico and he never evidenced a clear intent to establish a residency in Puerto Rico.

Finally it should be recalled that this matter was decided on a Motion for Summary Judgment. As the Court is well aware, a summary judgment is appropriate only when it appears from the pleading, depositions, admissions, answers to interrogatories, and affidavits that there are no genuine issues of material fact, and that the moving party is entitled to a judgment as a matter of law. In considering these items, the Court must construe them in the light most favorable to the party opposing the Motion for Summary Judgment. *Simmons v Lyons*, 746 F.2d 269 (1984). In addition, cases involving issues of

intent are particularly inappropriate for decision on Summary Judgment.

## CONCLUSION

All of the facts and circumstances of this case should be considered in determining whether the authority granted by Congress to Puerto Rico to pass legislation inconsistent with the Jones Act and General Maritime Laws extend to this plaintiff/appellant. When all of these factors are considered it should be decided that the authority granted by Congress does not extend to allow Puerto Rico's laws, under these circumstances to deny a seaman the ancient remedies available to him.

It is respectfully submitted that the Courts below were in error in granting this Motion for Summary Judgment in favor of the defendant/appellee, CROWLEY TOWING AND TRANSPORTATION COMPANY, and that this Honorable Court should, therefore, grant this writ in order to review the decision of the Trial Court, and the Fifth Circuit Court of Appeal.

/s/ Raleigh Newman
RALEIGH NEWMAN
435 10th Street
Lake Charles, Louisiana 70601
La Bar #7569
(318) 439-5788

*Attorney for Petitioners*
*Paul Middleton*

## APPENDIX

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

| | | |
|---|---|---|
| PAUL MIDDLETON | : | CIVIL |
| VERSUS | : | ACTION |
| | : | NUMBER: |
| CROWLEY TOWING & TRANSPORTATION COMPANY | : | JUDGE |
| | : | RULE 9(h) |
| | : | |

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SUIT UNDER THE JONES ACT
AND GENERAL MARITIME LAWS

NOW INTO COURT, through undersigned counsel, comes PAUL A. MIDDLETON, who respectfully represents:

1.

This action arises under the General Maritime Laws of the United States and the Jones Act.

2.

Plaintiff herein is PAUL A. MIDDLETON, of the full age of majority and resident of and domiciled in the Parish of Calcasieu, State of Louisiana.

3.

Made defendant herein is:

CROWLEY TOWING AND TRANSPORTATION CO., a domestic corporation authorized to do and doing business within the State of Louisiana, who at all times relevant herein was the employer of petitioner, PAUL A. MIDDLETON, and whose registered agent for service of process is C.T. Corporation System, 601 Poydras Street, New Orleans, Louisiana 70130.

4.

On or about March 29, 1990, petitioner, PAUL A. MIDDLETON, was employed by and actually working for the defendant, CROWLEY TOWING AND TRANSPORTATION CO., aboard a vessel, *The Santo Domingo*, owned and/or operated by defendant, CROWLEY TOWING AND TRANSPORTATION CO., as an able bodied seaman, upon navigable waters in the Port of San Juan, Puerto Rico.

5.

On or about March 29, 1990, petitioner, PAUL A. MIDDLETON, suffered injury to his person while within the course and scope of his employment aiding in the navigation, mission and operation of defendant's vessel on navigable waters.

6.

On or about March 29, 1990, petitioner, PAUL A. MIDDLETON, was helping to prepare a barge for moving when a tractor tire he was handling began to fall, jerking him over a railing. The primary causations of petitioner's injuries were the existence of a hazardous condition; lack of notice or warning to petitioner; the conditions under which petitioner was working; the condition of the vessel; inadequate crew; lack of or improper supervision; and a generally unsafe and unseaworthy workplace.

7.

Petitioner was caused to injure himself through negligence on the part of the defendant, its agents, servants and/or employees, as well as the unseaworthiness of the vessel at the time of the hereinabove described accident, and otherwise because defendant failed to provide a seaworthy vessel and a safe place for petitioner to work and otherwise to do what defendant should have done.

8.

As a result of said accident, petitioner, PAUL A. MIDDLETON, sustained severe, painful and permanently disabling injuries to his body, including but not limited to his chest and back, and he is disabled from his former employment.

9.

As a result of said accident and injuries, petitioner has sustained severe pain, discomfort, mental anguish

and distress to date which will continue in the future and he has been totally disabled to date from his former occupation as a member of the crew of the vessel, *Santo Domingo*, including, but not limited to, his occupation as a seaman, and said disability will continue as a result of said injuries. He has therefore sustained loss of income to date, which will continue in the future, and further his earning capacity has been impaired, and further he has incurred and will incur medical, hospital and pharmaceutical expenses in connection with said injuries, all of the foregoing for which he is entitled to recover damages from defendant.

10.

As a direct and proximate result of the aforementioned negligent acts of defendant and/or the unseaworthiness of the vessel in question, your petitioner, PAUL A. MIDDLETON, has sustained severe and permanently disabling injuries which combine to cause pecuniary and non-pecuniary losses for pain, suffering and mental anguish (past, present and future), medical expenses (past, present and future), loss of wages, fringe and retirement benefits (past, present and future), in excess of $1,000,000.00, but in any event in an amount that is reasonable in the premises, to be determined at trial of this matter.

11.

Petitioner, PAUL A. MIDDLETON, further avers it was and is the duty of said employer, defendant, to furnish him with maintenance and cure and loss of wages

till the end of the voyage; and that plaintiff is entitled to said maintenance and cure until he reaches the point of maximum medical cure, which he has not yet reached. Plaintiff is also entitled to punitive damages, inasmuch as said benefits have not been timely paid, and he is further entitled to costs, interest and attorneys' fees.

12.

The injuries to petitioner, PAUL A. MIDDLETON, were in no way attributable to any fault or want of care on his part.

13.

Petitioner designates this a Rule 9(h) proceeding, cognizable under the admiralty and general maritime laws of the United States.

WHEREFORE, petitioner prays that:

A) Defendant, CROWLEY TOWING AND TRANSPORTATION CO., be served with a copy of this petition and cited to appear and answer same;

B) After legal delays and due proceedings have been had, there be judgment herein in favor of petitioner, PAUL A. MIDDLETON, and against CROWLEY TOWING AND TRANSPORTATION CO., in the amount of $1,000,000.00, but in any event in the full and true sum of an amount reasonable in the premises to be proven at trial of this matter;

C) Defendant, CROWLEY TOWING AND TRANSPORTATION CO., be compelled to pay maintenance and cure to petitioner, PAUL A. MIDDLETON, until he has reached the point of maximum medical cure;

D) Defendant, CROWLEY TOWING AND TRANSPORTATION CO., be condemned to pay punitive damages, plus costs, attorneys' fees, and interest, for its failure to timely pay maintenance and cure to petitioner;

E) Petitioner, PAUL A. MIDDLETON, be found entitled to interest on the whole of all judgments herein from the date of judicial demand until paid in full;

F) Petitioner be allowed to proceed herein without the prior payment of costs, as a seaman; and

G) For all other equitable and just releif [sic] to which petitioner is entitled by law or equity.

RESPECTFULLY SUBMITTED:

DOMENGEAUX & WRIGHT

BY: /s/ Owen M. Goudelocke
OWEN M. GOUDELOCKE
T.A. # 6187

POST OFFICE BOX 3668
LAFAYETTE, LOUISIANA 70502-3668
TELEPHONE (318) 233-3033

ATTORNEYS FOR PLAINTIFF

PLEASE SERVE:

CROWLEY TOWING AND TRANSPORTATION CO.
Through its Agent for Service of Process
C. T. CORPORATION SYSTEM
601 Poydras St.
New Orleans, LA 70130

AFFIDAVIT

PARISH OF LAFAYETTE

STATE OF LOUISIANA

OWEN MURRAH GOUDELOCKE, being duly sworn, according to law, deposes and says:

That all of the allegations contained in the above and foregoing petition are true and correct to the best of his knowledge, information and belief, and further, that complainant, PAUL A. MIDDLETON, is a seaman and as such, is entitled to the benefits of Title 28 U.S.C.A., Section 1916, which provides that seamen may institute and prosecute suits and appeals to the courts of the United States in their own name and for their benefit for wages and salaries and for the enforcement of laws enacted for their health, safety and welfare, without prepayment of costs, or otherwise furnishing security therefor.

/s/ Owen Murrah Goudelocke
OWEN MURRAH GOUDELOCKE

SWORN TO AND SUBSCRIBED before me, this 1st day of June, 1990.

/s/ Nancy L. Greene
NOTARY PUBLIC

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

| | | |
|---|---|---|
| PAUL MIDDLETON | : | CIVIL ACTION |
| VERSUS | : | NO. 90-1094 |
| CROWLEY TOWING AND TRANSPORTATION COMPANY | : | JUDGE HUNTER MAGISTRATE TRIMBLE |

MEMORANDUM RULING

(Filed Feb. 21, 1991)

Currently before the Court is the Motion for Summary Judgment filed on January 2, 1991 by defendant, Crowley Towing and Transportation Company (CTT).

Plaintiff filed his complaint on June 7, 1990, alleging that he was injured in the course and scope of his employment with defendant while working on one of defendant's boats in the harbor of San Juan, Puerto Rico. Plaintiff asserts jurisdiction pursuant to the General Maritime Law of the United States and the Jones Act. 46 U.S.C. 688. Defendant claims that the General Maritime Law of the United States and the Jones Act do not apply here, citing the Puerto Rico Workmen's Accident Compensation Act (P.R.W.A.C.A.), April 18, 1935, No. 45, p. 250, subsection 1-42, as amended, Title 11, subsection 1-42, *Laws of Puerto Rico Annotated*, Equity Publishing Corp. 1977, "hereinafter PRWACA," as the controlling law in this situation.

Material undisputed facts are:

1. Defendant is a Louisiana corporation engaged in the ocean towing and transportation business and is duly authorized to do business in the Commonwealth of Puerto Rico.

2. The plaintiff went to Puerto Rico, rented a motel room, spent three weeks there seeking a job. He was finally hired by them on January 12, 1990. He would thereafter rent rooms in Puerto Rico by the week or day during his days off.

3. Plaintiff, a member of the Seafarer's International Union, pursued employment with defendant individually and independently from the Union, as he voluntarily traveled to San Juan, Puerto Rico, and solicited employment with the defendant based outside of Puerto Rico.

4. On March 29, 1990, plaintiff suffered injuries to his body while within the course and scope of his employment aboard defendant's vessel. He was at the time helping to move a barge in San Juan Harbor, Puerto Rico, prior to embarking on a voyage.

5. Plaintiff was insured pursuant to the Puerto Rico Workmen's Accident Compensation Act during his entire period of employment with the defendant in San Juan, Puerto Rico.

6. On April 5, 1990, defendant prepared an accident report, and plaintiff thereafter attended his initial medical evaluation with the Puerto Rico State Insurance Compensation Fund on April 6, 1990.

7. Plaintiff resided in the Commonwealth of Puerto Rico from late December of 1989, through April of 1990,

when he decided he would return to Lake Charles, Louisiana, prior to April 23, 1990, when he was scheduled for medical re-evaluation with the Puerto Rico State Insurance Compensation Fund.

## THE STANDARD FOR SUMMARY JUDGMENT

Summary judgment is proper under Federal Rule of Civil Procedure 56 (c) if it appears from the pleadings, depositions, admissions, answers to interrogatories, and affidavits, that there is no genuine issue as to any material fact and the mover is entitled to judgement as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). In considering these items, the Court must construe them in the light most favorable to the party opposing the motion. *Simmons v. Lyons*, 746 F.2d 265 (5th Cir. 1984).

Although the Court must resolve all factual inferences in favor of the non-movant in an action for summary judgment, the non-movant cannot manufacture a disputed material fact where none exists. Thus, the non-movant cannot defeat a motion for summary judgment by submitting an affidavit which directly contradicts his previous testimony without explanation. *Albertson v. T.J. Stevenson & Co., Inc.*, 749 F.2d 223 (5th Cir. 1984); *Van T. Junkins and Associated, Inc. v. U.S. Industries. Inc.*, 736 F.2d 656 (11th Cir. 1984).

## PUERTO RICO WORKER'S ACCIDENT COMPENSATION ACT

Although it is well-settled that the United States Congress may not delegate to the States its constitutional power to regulate the rights and liabilities within the

maritime jurisdiction, *Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917), the Commonwealth of Puerto Rico is not a State of the United States. Puerto Rico is considered to be a territory of the United States for purposes of Article IV, Section 3, Clause 2 of the Constitution of the United States. Under that provision of the Constitution the Congress may make all necessary statutes, rules and regulations respecting the Commonwealth of Puerto Rico. Therefore, the government of Puerto Rico has the powers that Congress has seen fit to give it. *Fonseca v. Prann*, 282 F.2d 153 (1st Cir. 1967), *cert. denied*, 365 U.S. 860 (1967).

In 1917, by Section 7, 8, and 37 of the Second Puerto Rico Organic Act, 39 Stat. 951, 954, 964, Congress conferred full power of control to the government of Puerto Rico over its local, navigable waters. This law has remained in effect as part of the Puerto Rico Federal Relations Act, Law 600, 65 Stat. 319; 48 U.S.C. 731 *et seq.*, specifically subsections 748, 749 and 812. However, this does not amount to a repeal of federal maritime law as to Puerto Rico. The rules of admiralty and maritime law in the United States are presently in force in the navigable waters of the United States in and around the island of Puerto Rico to the extent that they are not locally inapplicable either because they are not designed to apply to Puerto Rican waters, or because they have been rendered inapplicable to such waters by inconsistent Puerto Rican legislation. *Guerrido v. Alcoa Steamship Co.*, 234 F.2d 349 (1st Cir. 1956). Puerto Rico has exercised this power delegated to it by Congress and has enacted legislation inconsistent with the Jones Act and the General Maritime Law of the United States insofar as the Puerto Rico Worker's Accident Compensation Act (PRWACA) grants employer

immunity to covered employers for accidents occurring within the territorial navigable waters of Puerto Rico. *Guerrido. supra; Fonseca v. Prann, supra; Lusson v. Carter,* 704 F.2d 646 (1st Cir. 1983).

Most of the jurisprudence concerning these specific provisions of the PRWACA suggest that there are four factors that are commonly considered in determining whether or not the PRWACA applies to a given injury in its territorial waters:

> (1) Whether the employer is authorized by the Commonwealth of Puerto Rico to do business there;
>
> (2) Whether the employer insured its employee under the PRWACA at the time of the accident;
>
> (3) Whether the accident occurred within the territorial waters of Puerto Rico; and
>
> (4) Whether the seaman was a resident of Puerto Rico at the time of the accident.

*Lusson, supra; Perez De La Cruz v. Crowley Towing and Transportation Company,* 807 F.2d 1084 (1st Cir. 1986), *cert. denied,* 481 U.S. 1050 (1987).

None of the first three factors are challenged here. The evidence on record indicates that CTT is authorized to do business in Puerto Rico, that CTT insured defendant under the PRWACA, and that the accident occurred in San Juan Harbor, Puerto Rico. However, the parties seem to disagree on whether defendant was a "resident" of Puerto Rico for purposes of the PRWACA.

It should be noted at the outset that although plaintiff continually refers to American citizens and Puerto

Rican citizens, Puerto Rican citizens are, in fact, as much citizens of the United States as is anyone born in Louisiana or any other state. Citizenship is not an issue here, nor is domicile. Here we must focus on the rather indefinite concept of residency. To stress this point, in *Lusson v. Carter, supra,* one of the plaintiffs was domiciled in New York but resided in Puerto Rico at the time of the accident, and the PRWACA was found to apply as to him. *Id* at 650.

The word "resident" has a number of meanings in the law, which are generally determined by the context in which it is used. *Arredondo v. Brockette,* 648 F.2d 425 (5th Cir. 1981).

In *Martinez v. Bynum,* 103 S.Ct. 1838, 461 U.S. 321, 75 L.Ed.2d 879 (1983) the Supreme Court addressed the issue of a residency requirement in the area of access to public schools. The Court noted, "The central question we must decide here is whether . . . is a bona fide residence requirement. Although the meaning may vary according to context, 'residence' generally requires both physical presence and an intention to remain." As the Supreme Court explained . . .

> "When . . . a person voluntarily takes up his abode in a given place, with intention to remain permanently, or for an indefinite period of time; or, to speak more accurately, when a person takes up his abode in a given place, without any present intention to remove therefrom, such place of abode becomes his residence . . . "
>
> (footnotes and citations omitted).

In addition to the actions and the intentions of plaintiff, in the case at hand we must look to the motives and intentions of the Puerto Rican legislature in passing the PRWACA. This is because the meaning of the terms "residence" and "resident" may vary according to the context in which it is used and the subject matter being covered. 77 C.J.S. Residence. The PRWACA was apparently enacted with the dual intention of providing specific protection to workmen operating within Puerto Rico's territorial waters, while protecting local businesses (and the local economy) from burdensome court judgments at the same time. In our case, the plaintiff had spent some sixty days living in or operating out of Puerto Rico while working for a business authorized to do business in Puerto Rico by the Commonwealth. Defendant paid the required insurance premiums required by the PRWACA to cover plaintiff. Plaintiff entered into his employment contract in Puerto Rico, and lived either on defendant's boats that were home-ported in Puerto Rico, or rented rooms ashore. Until his injury rendered it impossible for him to continue his employment with defendant, plaintiff gave no indication but that he intended to stay on there indefinitely. It seems that, for the purposes intended by the PRWACA, plaintiff was a resident of Puerto Rico. It should be noted that plaintiff has made it clear that he has never resided in any one location for long, moving about from place to place and from job to job, using his mother's address for purposes of receiving mail and doing his banking (i.e. as domicile).

Plaintiff has also pointed to language in *Lusson, supra,* that suggests that there may be other countervailing considerations that will outweigh Puerto Rico's

interest in having its law applied. Although it does not appear that any court has actually resorted to these factors in deciding whether the PRWACA applies, a brief discussion of these factors is provided here. These factors were clearly set out in *Lauritzen v. Larsen*, 345 U.S. 571, 73 S.Ct. 921, 97 L.Ed. 1254 (1953), and are as follows:

(1) The place of the wrongful act;
(2) The law of the flag;
(3) The allegiance or domicile of the injured;
(4) The allegiance of the defendant shipowner;
(5) The place of contract;
(6) The inaccessibility of the foreign forum; and
(7) The law of the forum.

This list is non-exclusive and factors are each to be considered in light of the case at hand, not merely counted up to see which side has more of the listed contacts. Another factor was suggested in *Hellenic Lines Limited v. Rhoditis*, 398 U.S. 306, 90 S.Ct. 1731 (1970), which noted that the shipowner's base of operations is also a significant consideration in making such choice of law decisions.

Turning to the facts of our case as applied to these factors, the place of the accident was San Juan Harbor, Puerto Rico. The law of the flag would be United States law regardless of the choice of law because both the PRWACA and the Jones Act are both U.S. law, the first specifically authorized by the Congress and the other enacted directly by the Congress. The courts have clearly held that the PRWACA displaced federal maritime law

insofar as they conflict in cases in which the PRWACA applies. *Guerrido, supra; Fonseca, supra.* The allegiance or domicile of the injured appears to be Louisiana. The allegiance of the defendant shipowner is not so clear, defendant is a Louisiana corporation that is authorized to do business in Puerto Rico by the Commonwealth. The place of the making of the contract was San Juan, Puerto Rico. The inaccessibility of the foreign forum should not apply as plaintiff was present in the forum and being treated under the terms of the PRWACA before he voluntarily left and returned to Louisiana. The law of the forum should not be a substantial factor because the forum (United States) has authorized the "foreign" jurisdiction to pass laws specifically regulating the use of Puerto Rican territorial waters. Defendant shipowner's base of operations for purposes of this action was clearly San Juan, Puerto Rico, where plaintiff has conceded that the ships that he operated on were home ported.

It appears that even under the expanded list of factors pressed by the plaintiff, that Puerto Rico's interest in having its law applied outweighs any potential interests of the United States in having its law applied.

In *Alcoa Steamship Co. v. Velez*, 376 F.2d 521 (1st Cir. 1967) the court held that, "the PRWACA cannot be applied to a seaman injured in Puerto Rican waters on an American vessel owned by a corporation of a state other than Puerto Rico *where the contract of employment was not entered into in Puerto Rico.* Such seamen's rights under the Jones Act, the maritime law of unseaworthiness, and the maintenance and cure *attach upon their employment and follow them into Puerto Rican waters.*" (emphasis added) *Id.* at 525. In that case the plaintiff was a nonresident of

Puerto Rico who was only temporarily passing through Puerto Rico as a part of its voyage from ports outside Puerto Rico to other outside ports.

In *Alcoa Steamship Co. v. Perez Rodriguez*, 376 F.2d 35 (1st Cir. 1967) the plaintiff longshoreman (treated the same as seaman under the PRWACA) was a Puerto Rican resident who was injured in the course of his employment while operating on defendant's vessels in Puerto Rican territorial waters. The court held that, "the Puerto Rico Workmen's Accident Compensation Act has, within the area of its applicability, displaced the remedies of the maritime law . . . and provides the sole remedy of a Puerto Rico longshoreman against his employer for injuries sustained in the course of his employment." *Id.* at 38.

In *Lusson v. Carter*, 704 F.2d 646 (1st Cir. 1983), the deceased seamen were employed by a Louisiana corporation authorized to do business in Puerto Rico. It was stipulated that one of the seamen was domiciled and residing in Puerto Rico, that the other seaman was domiciled in New York and residing in Puerto Rico, that both were hired in Puerto Rico, that they were injured while in Puerto Rican territorial waters, and that the defendant had insured them under the PRWACA at the time they were injured. The Court first noted that its holding in *Alcoa Steamship Co., Inc. v. Velez, supra*, did not establish certain factors which must be found in limiting the PRWACA. The factors that the Court in *Lusson* relied on in reaching its decision were: the place of employment, the place of the injury, and the residence of the seamen; although it noted that there could be considerations (discussed earlier) that might override Puerto Rico's interest in having its law applied.

We find that the best definition of residence to apply is:

> Personal presence at some place of abode with no present intention of definite and early removal and with purpose to remain for undetermined period, not infrequently, but not necessarily combined with design to stay permanently. *T. P. Laboratories, Inc. v. Huge*, D. C. Md., 197 F. Supp. 860, 865.

Plaintiff failed to avail himself of the services and treatment provided under the PRWACA, voluntarily electing to return to Louisiana for private medical treatment and to pursue legal remedies outside of those provided by Puerto Rico.

Motion for Summary Judgment is GRANTED. So ordered.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana on this 21st day of February, 1991.

/s/ Edwin F. Hunter, Jr.
EDWIN F. HUNTER, JR.
UNITED STATES
DISTRICT JUDGE
SENIOR STATUS

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAKE CHARLES DIVISION

PAUL MIDDLETON : NUMBER: CV90-1094

VERSUS Judge Hunter
Magistrate Trimble

CROWLEY TOWING &
TRANSPORTATION
COMPANY

JUDGMENT

(Filed Feb. 26, 1991)

This case came on for hearing by motion for summary judgment, submitted both on briefs and by oral argument, and for the written reasons stated in the memorandum ruling dated February 21, 1991;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the motion for summary judgment filed by defendant be granted and that plaintiff's complaint be hence dismissed with prejudice.

IT IS FURTHER ORDERED that this is a final judgment within the meaning of Rule 54 of the Federal Rules of Civil Procedure.

THUS DONE AND SIGNED at Lake Charles, Louisiana, this 26th day of Feb. A.D., 1991.

/s/ Edwin F. Hunter
HON. EDWIN F. HUNTER, JR.

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

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No. 91-4186
Summary Calendar

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PAUL MIDDLETON,

Plaintiff-Appellant,

VERSUS

CROWLEY TOWING & TRANSPORTATION COMPANY,

Defendant-Appellee.

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Appeal from the United States District Court
for the Western District of Louisiana
(CV90-1094)

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(November 4, 1991)

Before JONES, DUHÉ, and WEINER, Circuit Judges.

DUHÉ, Circuit Judge:[1]

The trial court held that the Puerto Rico Worker's Accident Compensation Act, P.R. Laws Ann. tit. 11, §§ 1-42 ("PRWACA"), excluded Plaintiff's Jones Act and maritime claims as a matter of law and dismissed the case on Defendant's motion for summary judgment. Finding

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[1] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

that Defendant is indeed immune from suit under PRWACA, we AFFIRM.

The PRWACA displaced the Jones Act and general maritime law and is the exclusive remedy against an employer for covered seaman injured in Puerto Rican waters. PRWACA § 21. *See also Salas Mojica v. Puerto Rico Lighterage Co., Inc.*, 492 F.2d 904 (1st Cir. 1974); *Alcoa Steamship Co. v. Perez Rodriguez*, 376 F.2d 35 (1st Cir. 1967).

Summary judgment is appropriate if the record discloses "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In reviewing the summary judgment, we apply the same standard of review as did the district court. *Waltman v. Int'l Paper Co.*, 875 F.2d 468, 474 (5th Cir. 1989); *Moore v. Mississippi Valley State Univ.*, 871 F.2d 545, 548 (5th Cir. 1989).

Defendant undeniably meets some requirements of the PRWACA: Defendant is duly authorized to do business and in fact is doing business in Puerto Rico; Defendant is an insured company under the PRWACA; and the accident occurred while Plaintiff was in the course of his employment within the territorial waters of Puerto Rico.

The only real issue is whether Plaintiff was a "resident" of Puerto Rico at the time of the accident.[2] The facts

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[2] Plaintiff's contention that the court should look at the relationship of all the parties involved, the flag of the vessel, and a myriad of other factors is misguided. *Lauritzen v. Larsen*, 345 U.S. 571, 73 S.Ct. 921, 97 L.Ed. 1254 (1953), dealing with considerations pertinent to choice of law between American and *foreign* law is not controlling. *See Salas Mojica*, 492 F.2d at 904-05.

as established in Plaintiff's deposition are undisputed for purposes of this motion.

Before his accident, Plaintiff never resided in any one location for long, and moved about from place to place and job to job. He used his mother's Lake Charles address as a permanent mailing address and maintained a Louisiana bank account both before starting with Defendant and during his employment.

Plaintiff flew to Puerto Rico to look for a job in late December 1989. He rented a hotel room and, after three weeks of persistent calls to the port captain, was hired by Defendant in San Juan in January 1990.

Plaintiff worked on different ships throughout his time with Defendant: he took inter-island trips for two to five days, then moved to different vessels that were shorthanded, and sometimes did harbor service. He took one trip to Lake Charles.

Between voyages, he stayed in San Juan to be available if called back out again. He rented different apartments or hotels by the week or by the day, whatever he could find "really cheap." Sometimes between jobs he slept on a boat if he could not find a place within his budget. During his employment, he spent most of his time aboard the Defendant's vessels.

Plaintiff was injured March 29, moving a barge around the pier. After a quick voyage, he went to a hospital in St. Thomas and was flown back to San Juan. He saw a doctor in San Juan, then slept on the streets of San Juan for five days, because he was "broke." Upon receiving two weeks' pay, Plaintiff found housing in San

Juan. He might have stayed till his next check-up (on April 23), but decided to leave Puerto Rico for Lake Charles in late April because he was running out of money again.

He had stayed in Lake Charles before: if he had two months off, for example, he might stay one month in Lake Charles. Otherwise Plaintiff might travel on days off. "I'm liable to go anywhere you know. I was a real active person," Plaintiff testified. Plaintiff argues that the facts that he travelled freely and spent most of his time aboard the vessels indicate that he had no "residence" in Puerto Rico.

A seaman is not a resident if he is employed outside Puerto Rico and his only contact is his vessel's entry into Puerto Rican waters for a temporary visit. *Alcoa Steamship Co. v. Vélez*, 376 F.2d 521, 523 (1st Cir. 1967). Plaintiff's situation is the opposite: he travelled to Puerto Rico and found employment there, and left only temporarily when his vessels left Puerto Rican territorial waters. He presents no evidence suggesting that he did not intend to stay indefinitely in Puerto Rico if the accident had not occurred.

The trial court was correct in ruling on the motion upon the stipulated facts. A trial will not elucidate more facts material to the issue of residence. The trial court concluded, as we conclude, that the Plaintiff was a "resident" of Puerto Rico for purposes of PRWACA. Accordingly, the judgment of the district court is

AFFIRMED.

IN THE UNITED STATES OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 91-4186

---

PAUL MIDDLETON,

Plaintiff-Appellant,

versus

CROWLEY TOWING & TRANSPORTATION COMPANY,

Defendant-Appellee.

---

Appeal from the United States District Court
for the Western District of Louisiana

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ON PETITION FOR REHEARING

(DECEMBER 6, 1991)

Before JONES, DUHE and WIENER, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

/s/ John M. Duhé
United States Circuit Judge

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